*THE HONOURABLE SRI JUSTICE A.GOPAL REDDY

+WP Nos.14369 of 1995 and batch

% TWENTY THIRD DAY OF L MARCH, TWO THOUSAND SIX

WP No.14369/1995:

#Keram Mangaiah ..Petitioner

Vs.

$ 1. The Agent to the Government at Khammam and another.

..Respondents

! Counsel for the writ petitioner: Sri M.R.K.Chowdhary, Senior Counsel

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^ Counsel for the respondents: G.P. for Social Welfare

< Gist:

>Head Note

?1.(1966) 3 All ER 657

THE HONOURABLE SRI JUSTICE A.GOPAL REDDY

W.P.Nos. 14369 and 14370 of 1995

Dt. 23-3-2006

WP No.14369/1995

Keram Mangaiah ..Petitioner

V.

1.The Agent to the Government at Khammam and another.

Respondents.

WP No.14370/1995

Madem Sreenu ..Petitioner

V.

1.The Agent to the Government at Khammam and another.

..Respondents.

THE HONOURABLE SRI JUSTICE A.GOPAL REDDY

W.P.Nos. 14369 and 14370 of 1995

COMMON ORDER

By means of filing these writ petitions under Art.226 of the Constitution of India, the petitioners challenged the rejection endorsement dt. 15-6-19950 of the second respondent, Sub-Registrar, Kothagudem refusing to register sale documents presented for registration in the light of Form-L dt. 10-6-1995 received from the first respondent Agent to the Government, Khammam.

Since issue that falls for adjudication in both the writ petitions is one and the same, they are being heard together and disposed of by this common order.

The petitioners in WP No.14369/1995 and 14370/1995 intend to purchase Ac.1-00 and in S.No.118/2 and Ac.2-16 guntas in S.No.118/2 situate at Chunchupalli Gram Panchayat in Kothagudem Mandal, Khammam District respectively. The area is a notified scheduled area. The documents were presented for registration in the office of Sub-Registrar, Kothagudem under Ref. No.P8/87 and P4/89 along with declaration in Form-K requesting to grant Form-L to register the sales took place in favour of the declarants. In the light of the declarations filed by the petitioners, as the transaction took place in the scheduled village, the matter required to be enquired by the Revenue Divisional Officer under Rule 18(1) of the A.P. Scheduled Area

Land Transfer Rules,1969 (for short “the Transfer Rules”). The Revenue Divisional Officer who enquired into the matter submitted his report to the Agent to Government stating that the purchasers are scheduled tribes and the land under the sale deed was assigned to Md. Jaheeruddin and the seller is not having saleable rights over the land. Since the transaction is in violation of Section 3 of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for short “the Act 9 of 1977”), the first respondent issued Form-L under Rule 18 (2)(b) of the Transfer Rules to the Registering Authority directing him to refrain from registering documents in view of the prohibition contained under Act 9 of 1977. Correctness of the same is challenged contending that the first respondent did not refer to the authority under which he is entitled to issue such direction to the second respondent, the same is without jurisdiction and no opportunity was afforded to the petitioners to explain how Sec.5 of the Act 9 of 1997 has no application to the facts of the present cases, which prohibits registration of assigned land. Since land in question was not shown to have been covered by any list of assigned land prepared by the Collector and issued to the second respondent, direction issued by the Collector is without jurisdiction. The second respondent can refuse to register the documents only in case the land is in the list of assigned lands prohibited to be transferred and the action of the first respondent in issuing direction to the second respondent from refraining to register the documents is arbitrary and the same is liable to the set-aside. After restraining the respondent No.2 from registering the document, R-1 appears to have instructed his subordinate staff to take steps to take action under Section 4 of the Act 9 of 1977 without affording any opportunity to the petitioners to explain against the action proposed.

The first respondent filed counter-affidavits in both the writ petitions, with the same averments, stating that the land to an extent of Ac.8-26 in S.No.118/2 of Chunchupalli is classified as Government Poramboke as per the settlement record and it was alienated to one Maloth Nanda, and it was subsequently came into possession of Maloth Ramdas,

husband of Maloth Chiliki. After demise of Maloth Ramdas, the said Maloth Chiliki and her two sons sold the land to the petitioners. As there is no valid document to succeed the property by Maloth Nanda and his legal heirs from the original Pattedar Mohd. Jaheeruddin, who was assigned the land, alienation of such land is prohibited and void under Section 3 of the Act 9 of 1977. As per Rule 18(1) of the Transfer Rules, Form-K declarations submitted by the petitioners were got enquired and noticed that the land in question is Government Poramboke land and it stands in the name of Mohd. Jaheeruddin and the vendors of the petitioners are not having absolute rights over the land to sell the same to them and it attracts the ingredients of Sec. 3 of the Act 9 of 1977 and accordingly Form-L was issued under Rule 18(2)(b) of theTransfer Rules.

Sri M.R.K.Choudhary, learned Senior Counsel appearing for the petitioners in both the writ petitions contends that the impugned endorsement is liable to be set-aside on the following grounds:

1. Rules 18 and 19 of the A.P. Scheduled Area Land Transfer Rules,1969 are not published in any of the books and unless the said rules are published in the manner prescribed, they cannot be given effect to.
2. No power is conferred on the Collector under the Registration Act directing the Sub-Registrar not to register the documents when presented for registration.
3. Prohibition contained under Regulation 3 of A.P. Scheduled Area Land Transfer Regulation, 1959 will not at all attract since it is a transfer in favour of a Scheduled Tribe, therefore, the impugned endorsement cannot be passed under Section 3 of Act 9 of 1977.
4. Similarly, unless the lands are notified to be assigned land exercisory power under Section 5 of the Act 9 of 1977 does not arise.
5. The Collector cannot issue direction to the Registering

Authority not to register the sale deeds on an enquiry conducted by his subordinates without giving an opportunity to the petitioners and the same is in violation of principles of natural justice.

Before, I deal with the submissions, it is appropriate to notice rule 18(1) of the Transfer Rules:

> "18.(1) A document relating to transfer of immovable property situated in the Agency Tracts required to be registered under Section 3B by any registering officer appointed under the Registration Act,1908 shall be presented before such Officer along with a declaration in Form 'K' in triplicate as attested and verified by the Agent concerned.
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> (2)(a) Before presenting any document for registration as aforesaid, the transferee shall submit the declaration in Form-K duly filled and signed by him to the Agent for verification and attestation.
>
> (b) On receipt of any such declaration in Form-K for verification and attestation, the Agent concerned shall within thirty days cause an enquiry to be made by the Agency Munsiff-
>
> (i) Whether the transferee is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Cooperative Societies Act, 1964, which is composed solely of members of the Scheduled Tribes, and;
>
> (ii) Whether transfer is in contravention of sub-section (1) of section 3 of the Regulation and on receipt of the verification report from the Agency Munsiff return the declaration in Form-K after duly endorsing the same as in Form-L to the transferee as per the said verification report.

Among number of submissions, as made above, I shall first consider the submission that Rule 18 of the Transfer Rules having not been published in the manner prescribed cannot be given effect to. Regulation 3-B of the A.P. Scheduled Areas Land Transfer Regulation, 1959 places

restriction on the registration of the document. For due implementation of Regulation 3-B, Rule 18, as referred to above, was added to Andhra Pradesh Scheduled Areas Land Transfer Rules, 1969 by Memo No.2422/F1/79-6 S.W.(F1) dt. 20-6-1980 published in A.P.Gazette RS to Pt.II dt. 25-9-1980 and the same have also found place in the book titled *The Law Relating to Scheduled Area in Andhra Pradesh*, by Koka Raghava Rao, 1984 Edition, which were extensively referred to by the Advocates, which also obligates the person presenting the document to furnish declaration in the prescribed form which shall be subject to verification in the prescribed manner that the transferee is a member of a Scheduled Tribe or a society registered or deemed to be registered under A.P. Cooperative Societies Act,1964 which is composed solely of members of the Scheduled Tribes.

It is well settled that the courts will normally take the view that the main responsibility for the contents of a particular pleading is that of the advocate who sign the pleadings. Learned Senior Counsel who drafted the pleadings and filed into court at the relevant point of time has not bothered to verify about the publication of Rule 18 and Form “K” and “L” but asserted under para 5 of the affidavit filed in support of the writ petition that on verification he did not find any such Form-L or the Rule 18 in any of the rules issued in the A.P. Assigned Lands (Prohibition of Transfer) Act, 1977 or under the Registration Act. The respondent No.1 did not disclose full name or title of the rules in detail. In spite of the same, the learned Senior Counsel is emphatic in his submission that Rule 18 cannot be enforced.

Role of lawyer/advocate has been precisely stated by Lord Denning in ***RONDEL V. W*** (1966) 3 All ER 657), wherein it was observed that it is a mistake to suppose that he (advocate) is the mouthpiece of his client to say what he wants. The code, which obligates the advocate to disregard the most specific instructions of his client, if they conflict with his duty to the court is not a code of law. It is a code of honour. If he breaks it, he is offending against the rules of the profession.

In the light of insertion of Regulation 3-B and Rule 18, I consider the argument that Rule 18 of the Transfer Rules having not been published in the manner prescribed cannot be given effect to is flawed for the reason both the petitioners applied for registration of documents by filing declarations in Form-K in compliance of rule 18(2)(a) as referred to above, which indicates that the petitioners are aware of the Transfer Rules and the statutory compliance as required before registration. Merely because some of the authors of the books have not published the said rules cannot give rise to a presumption that the said Transfer Rules have not been enforced or implemented in view of the compliance of the same by the petitioners.

I proceed to consider the next argument presented on behalf of the petitioners, namely, in the absence of any power conferred under the Registration Act, 1908, Collector will not have any power to issue such a direction to the Sub-Registrar not to register the documents presented by the petitioners by virtue of sub-section (1) of Section 3 of the Act 9 of 1977. Section 3 of A.P. Land Transfer Regulation,1959 prohibits transfer of immovable property by a member of a Scheduled Tribe. Sub-section (1)(a) envisages that notwithstanding anything contained in any enactment, rule or law in force in the Agency tracts, any transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person who is al member of Scheduled Tribe. Whereas Section 5 of the Act 9 of 1977 deals with prohibition of registration of assigned lands. It envisages that notwithstanding anything contained in the Registration Act, 1908 on or after commencement of Act 9 of 1977, no registering officer shall accept for registration of any document relating to the transfer of or the creation of any interest in any assigned land included in the list of assigned lands in the District which shall be prepared by the District Collector and furnished to the registering officer except after obtaining prior permission of the District Collector concerned for such registration. Provisions of Act 9 of 1977 have already been upheld by various judicial

decisions. The very idea behind prohibiting sale of assigned lands, which were assigned to landless poor persons, whether they are Scheduled Castes or Scheduled Tribes, is to enjoy the same by the assignees or their legal heirs only. Section 3 of the Act 9 of 1977 declares any deed of transfer or other document relating to assigned land shall be deemed to be null and void.

For due implementation of the said section Rule 18, as referred to above, was inserted to the Transfer Rules obligating the transferee to submit the declaration in Form-K duly filled and signed by him to the Agent for verification and attestation. On receipt of such declaration, the Agent Concerned is under obligation to cause an enquiry to be made by the Agency Munsiff whether the transferee is a member of a Scheduled Tribe or a society registered or deemed to be registered under the A.P. Cooperative Societies Act,1964, and whether transfer is in contravention of sub-regulation (1) of regulation 3 of the A.P. Scheduled Area Land Regulation,1959, and on receipt of the verification report from Agency Munsiff return the declaration in Form-K after duly endorsing the same as in Form-L to the transferee, as per the said verification report. The petitioners who are the purchasers of the property knowing fully well filed declarations in Form-K before the Agent to Government, who after making verification issued Form-L stating that the land is prohibited from transfer under the provisions of Section 3(1) of Act. 9 of 1977, marking a copy to the Sub-Registrar not to register the document. In view of the same, submission made by the learned Senior Counsel that Collector will not have any jurisdiction to issue Form-L cannot be countenanced in view of the statutory requirement required under the Transfer Rules. Once there is a statutory prohibition under the Act 9 of 1977 and land, which was assigned land, registering officer cannot register the document in contravention of Section 3 of Act 9 of 1977.

It was lastly contended that unless notification as such is issued under Act 9 of 1977 prohibits transfer of assigned lands under Section 3,

exercisory power under section 5 which prohibits registration of such document in relation to transfer of or the creation of any interest in any assigned land included in a list of assigned lands in the District which shall be prepared by the District Collector and furnished to the Registering officer except after obtaining prior permission of the District concerned of the such registration does not arise. Non furnishing of the list of assigned lands to the Registering Officer will not render transaction valid under the Act. It is the duty of the purchaser to verify the nature of the land and shall also obtain Encumbrance Certificate to know the nature of the land. The very fact that making it obligatory to submit a declaration in Form-K before registration of such document is to curb the violation of regulation 3. While making verification as contemplated under regulation 3(b) and Rule 18 of the Transfer Rules if it is noticed the land which is purchased by the petitioners cannot be transferred in view of the nature of the land and prohibition contained under Act 9 of 1977 and if such an endorsement is made to the said effect, the second respondent has not committed any illegality in making such endorsement and it is his duty to implement Act.9 of 1977 and bring it to the notice of the registering authority about the nature of the land.

In view of the same, the submission made by the learned Senior counsel that petitioner should be given an opportunity to explained that it is not an assigned land before making such an endorsement appears to be a fallacy.

The writ petitions fail and they are accordingly dismissed. In the circumstances of the case, no order as to costs.

Kmr 23-3-2006